

TEXT AMENDMENT STAFF REPORT



Hearing Date: 4-2-15

Case File #: TA-15-08

General Description: Dune Walkovers

☐ Town Initiated

☒ Citizen Initiated

Applicant(s): Palm Cove Owners Assoc. by Robert Exum, Registered Agent

APPLICATION OVERVIEW:

The Sunset Beach Planning & Inspections Department received an application to revise the text in Article 6, Section 6.04 Table of Permitted/Special Uses, Section 6.06(L)(F), and Appendix A – Definitions for “Dune Walkover” in the Town’s Unified Development Ordinance (“UDO”). In summary, the current UDO provisions allow for a maximum of one (1) dune walkover for every four (4) building units. The applicant is seeking amendment text revision to allow one (1) dune walkover for every two (2) building units and to amend the definition for “Dune Walkover”.

STAFF COMMENTARY

Staff has reviewed the applicant’s application, the UDO including Section 6.04 and Appendix A, and other materials including the Town’s Land Use Plan. For purposes of this report and to address the request methodically, staff classified the applicant’s request into three (3) subcategories based upon the applicant’s written request. After reviewing and considering these subcategories, staff provides the following summary, analysis and recommendation:

Sub-Category 1. Amending the Permitted/Special Use Table (UDO Section 6.04)

The first part of the applicant’s request is to amend the permitted use table to reduce the number of walkovers. The current ordinance language in UDO Section 6.04 regarding Dune Walkovers allows them as permitted uses in the residential zoning districts, all on the island. See below.

P - Permitted Use

S - Special Use

PS - Permitted Use with Supplemental **Regulations**SS - Special Use with Supplemental **Regulations**

Uses	MR1	MR2	MB3	MB1	MB2	BR1	BR2	BB1	MH1	MH2	RI1	CR1	AF1	MUD	Supplemental Regulations
CAMA approved dune walkovers. Limited to a maximum of 1 per 4 building units						P	P					P			

These uses are permitted outright. However, they are limited to a maximum of one (1) for every (4) building units.

The applicant seeks to amend the ordinance so as to permit more dune walkovers in the “uses” column below. The proposed ordinance language for consideration is as follows:

P - Permitted Use

S - Special Use

PS - Permitted Use with Supplemental **Regulations**SS - Special Use with Supplemental **Regulations**

Uses	MR1	MR2	MB3	MB1	MB2	BR1	BR2	BB1	MH1	MH2	RI1	CR1	AF1	MUD	Supplemental Regulations
CAMA approved dune walkovers. Limited to a maximum of 1 per 4 <u>2</u> building units						P	P					P			

Sub-Category 2. Amending Zoning District Development Standards (UDO Section 6.04(L)(F))

The second part of the applicant’s request is to amend UDO Section 6.04 (L)(F). This Section specifically addresses “certain structures” and their development within sensitive CAMA areas on beachfront lots for the CR-1 zoning district. Within this language, the standard is repeated from the above-referenced permitted use table of one walkover per every four building units. The applicant’s proposal is set forth below:

“...from the ocean. CAMA approved dune walkovers shall be permitted, **limited to a maximum of 1 per 2 building units**. Retaining walls, bulkheads...”(emphasis added).

The development standards for BR1 and BR2 do not have this language. As such, the minimum standard for dune walkovers in these districts would default to the “uses” column on the permitted use table.

Sub-Category 3. Amending the “Dune Walkover” Definition (Appendix A)

The third part of the applicant’s request is to amend Appendix A in regards to how dune walkovers are defined. The Town’s current ordinance defines “Dune Walkover” as follows:

"An accessway constructed to CAMA standards and must be for public access to an ocean beach."

The applicant is proposing the following amendment:

"An accessway constructed to CAMA standards and must be for public access or dedicated for the use of two or more lots, to an ocean beach."

Staff believes this request involves the issue of public access to the beach. Therefore, staff reviewed the request against the Town's applicable and adopted Land Use Plan policies regarding beach access. Staff identified the following policies that are considered to be the most applicable to this request. Staff did not look at specific district statements because this request spans multiple zoning districts and falls more in-line with consideration of an overall policy of growth for the Town.

1. Policy 30:

a. Land Use and Development Decisions Consistent with Land Use Plan - requires that any decision for land use and development-related activities must be consistent with the adopted land use plan.

2. Public Access Policies:

a. Public Access Goal: "Maximize public access to the beaches and the public trust waters of the jurisdiction."

a. Policy 31, Public Trust Areas - specifies factors to consider to protect public access and public trust rights to access to the beach.

b. Policy 32, Support for Coastal and Estuarine Beach Access - supports the public having access to the beach so long as no conflict exists with the rights of residents in the enjoyment of their property.

Based upon the Town's adopted policies found within its adopted 2010 CAMA Land Use plan, it is staff's position that the plan contemplates promoting and encouraging "public" access to the public trust waters. Private walkover access (meaning access for individual property owners only) is not considered a promoted access type, nor is it found or mentioned in the Town's Land Use Plan policies. Additionally, private dune walkovers do not currently exist anywhere as an existing walkover access type on the island to the ocean. Given this, staff based its review and recommendation, in part, from the position that promoting access for public walkovers is paramount.

The amendment as proposed would, essentially, solely promote private beach accesses at the expense of the public being able to access the beach. The applicant's proposed amendment to the dune walkover definition is the "lynch pin" to this line of thought. By changing the definition as outlined in #3 above, it would create private walkovers where

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they were not, and have not been, considered before. Coupling this proposed definition with the proposed change in allowance for walkovers for every two (2) building units would signify a substantial change from the Town's historic practice of promoting and encouraging public access and would significantly change the Town's existing beach landscape.

The applicant's proposal would allow neighboring property owners to enter into private agreements to dedicate a common property line among them in order to form a private beach dune walkover, thereby allowing a private beach access on every other property line going down the Town's entire beachfront. This would apply to all oceanfront lots on the island - both proposed and existing lots.

It is staff's position that the above illustration and scenario run counter to the Town's adopted land use policies. By keeping the current "1 per 4" walkover requirement, the Town ensures, by design, that all walkovers along the beach would continue to allow public access by ensuring walkovers are held and utilized as common area property as part of the public trust or an HOA (as in the case of private communities).

For all of the foregoing reasons, staff does not recommend approval of the applicant's application.

STAFF RECOMMENDATION

Staff **recommends denial** of the subject application, as proposed.

PLANNING BOARD SUMMARY

Action:

The Planning Board finds that the proposed amendments to Unified Development Ordinance ____ is X is not consistent with the Sunset Beach Comprehensive Land Use Plan.

Passed ____ Denied X (For ____ Against 5 Abstained ____)

Commentary:

Planning Board supported staff's recommendation that the request was not consistent with the Town CAMA Land Use Plan or district intent statement(s).

_____BELOW TO BE COMPLETED BY TOWN CLERK_____

TOWN COUNCIL ACTION

TOWN COUNCIL SUMMARY

Planning Board Recommendation Accepted: ☐ Yes ☐ No ☐ Returned

Public Hearing Scheduled/Held:

Council Action:

The Town Council finds that the proposed amendments to Unified Development Ordinance _____is _____is not consistent with the Sunset Beach Comprehensive Land Use Plan.

Text Amendment Ordinance:

Adopted_____ Denied_____ (For_____ Against_____ Abstained_____)

Commentary: